

ADAM WANG, Bar No. 201233  
LAW OFFICES OF ADAM WANG  
12 South First Street, Suite 613  
SAN JOSE, CA 95113  
Tel: (408) 292-1040  
Fax: (408) 416-0248  
[waqw@sbcglobal.net](mailto:waqw@sbcglobal.net)

TOMAS E. MARGAIN, Bar No. 193555  
LAW OFFICES OF TOMAS E. MARGAIN  
1550 Bryant Street, Suite 725  
San Francisco, CA 94103  
Telephone: 415-861-9600  
Fax: 415-861-9622  
[margainlaw@hotmail.com](mailto:margainlaw@hotmail.com)

Attorney for Plaintiffs  
Vladimir A. Balarezo & Osmin Avila

Grant Carlson, Esq. (State Bar No. 155933)  
Friedman Enriquez & Carlson LLP  
433 N. Camden Drive, Suite 965  
Beverly Hills, CA 90210

Attorney for Defendants  
Nth Connect Telecom Inc. & Steven Chen

UNITED STATES DISTRICT COURT  
FOR NORTHERN DISTRICT OF CALIFORNIA

VLADIMIR A. BALAREZO, ET AL,  
individually and on behalf of others similarly  
situated

Case No.: C07-05243 JF

JOINT CASE MANAGEMENT STATEMENT

Plaintiff,  
vs.

NTH CONNECT TELECOM INC., AND  
STEVEN CHEN,

Defendants

In accordance with the Standing Order for All Judges of the Northern District of California, the parties in this matter hereby submit this Joint Case Management Conference Statement.

1. **Jurisdiction and Service**

1 The basis for the Court's subject matter jurisdiction over the claims of Plaintiffs Vladimir  
2 Balarezo and Osmin Avila (hereinafter "Plaintiffs") is the Fair Labor Standards Act, 29 U.S.C.  
3 §§ 201 *et seq.*, as alleged in the Complaint. There are no existing issues regarding personal  
4 jurisdiction or venue. There are no parties that remain to be served.

## 5 2. **Facts**

6 Plaintiffs were employed by defendant Nth Connect Telecom, Inc. as technicians to install  
7 satellite equipment. Defendant Steven Chen is the CEO of Nth Connect. In this action,  
8 Plaintiffs seek compensation for overtime and other wage and hour claims against Defendants  
9 under Federal and California law, and also seeks class certification.

10 The principal factual issues in dispute are:

11 1. Whether and to what extent Plaintiffs and the class they seek to represent  
12 were not paid overtime to which they are entitled;

13 2. Whether and to what extent the Plaintiffs and the class they seek to  
14 represent had not been provided with meal breaks as required by law.

15 3. Whether Plaintiffs' claim is suitable for a class action certification.

16 4. Whether Plaintiffs are suitable as class representatives.

## 17 3. **Legal Issues**

18 Plaintiffs have filed this action as a class action under Rule 23 of the Federal Rules of  
19 Civil Procedure. Plaintiffs also seek treatment of opt-in class action under 29 U.S.C. § 216(b).  
20 In his substantive allegations, Plaintiffs assert that Defendants failed to pay the Plaintiffs and a  
21 class of employees overtime pay in violation of California Labor Code §§ 501 and 1194 as well  
22 as in violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* Plaintiffs further allege  
23 that Defendants failed to pay Plaintiffs and the putative class members their wages upon  
24 termination in violation of California Labor Code § 201. Finally, Plaintiffs seek restitution of  
25 overtime wages in accordance with California Business & Professions Code § 17200.

Defendants dispute that Plaintiffs were improperly compensated, and instead assert that at

1 all times they paid plaintiff properly under the law. Defendants also dispute both whether  
2 plaintiffs are an adequate representative for the putative class and whether a class action can be  
3 certified.

#### 4 **4. Motions**

5 The parties anticipate the filing of the following motions:

6 (a) Defendants' Rule 12(b) motion to dismiss, heard on February 22, 2008 and denied  
7 on February 27, 2008;

8 (b) Plaintiffs' Motion for Class Certification under FLSA, to be heard on May 2,  
9 2008;

10 (c) Plaintiffs' Motion for Class Certification und Fed. R. Civ. P. 23;

11 (c) Plaintiff's Partial Summary Judgment Motion for Class Liability;

12 (d) Defendants' Motions for Partial Summary Judgment and/or Summary Judgment.

#### 13 **5. Amendment of Pleadings**

14 Plaintiffs have field a First Amended Complaint, adding one more named Plaintiff. Plaintiffs  
15 have secured clearance from California Labor and Workforce Development Agency to sue under  
16 California Labor Code Private Attorney General's Act ("PAGA") to seek civil penalties on  
17 behalf all current and former employees. Plaintiffs are yet to decide whether to pursue PAGA  
18 claims in this action.

#### 19 **6. Evidence Preservation**

20 Defendants are hereby notified by their counsel of the obligation to preserve all  
21 electronically stored evidence and will not take steps to do so.

#### 22 **7. Disclosures**

23 The parties have served their respective initial disclosures.

#### 24 **8. Discovery**

1 The parties agree to adhere to the following discovery and case management schedule:

2 (a) Deadline to complete fact discovery: February 28, 2009.

3 (b) Deadline for Plaintiff to file motions for class certification: November 30, 2008.

4 (c) Deadline for expert disclosure statements under Fed. R. Civ. P. 26: March 31,  
5 2009.

6 (d) Deadline to conduct expert discovery: April 30, 2009.

7 (e) Last day for hearing dispositive motions to be filed: June 19, 2009.

8 The parties wish to reserve the ability to seek an acceleration (or an extension) of the above-  
9 proposed schedule.

### 10 **9. Class Action**

11 Plaintiffs provide the following statement in compliance with Local Rule 16-9(b).

12 (1) The class action for claims under California law is maintained under Fed. R. Civ.  
13 P. 23(a)(1), 23(a)(2), 23(a)(3), 23(a)(4), 23(b)(3). This class action insofar as claims under the  
14 FLSA are asserted is maintainable under 29 U.S.C. § 216(b), as distinct from Fed. R. Civ. P. 23.

15 (2) Plaintiffs propose two separate classes:

16 a) FLSA claims: All non-exempt installation technicians: i) who worked for  
17 defendant commencing at any time since three years before the filing of this action; (the "FLSA  
18 Class").

19 b) California claims: All installation technicians who: i) worked for  
20 defendant in California commencing at any time since four years before the filing of this action;  
21 (the "California Class"). A sub-class of California Class consists of all installation technicians  
22 whose employment with defendant terminated at any time in three years before the filing of this  
23 case (California § 203 Class).

24 Depending upon further investigation and the results of discovery, Plaintiffs may seek to  
25 modify these class definitions. Moreover, further discovery may justify elaboration on the form  
of Defendants' failure to provide employee benefits such that added classes are appropriate.

1 (3) Plaintiffs are members of the Federal Class, as well as the California Class and,  
2 like other members, were not paid overtime pay and were not provided required meal breaks in  
3 violation of the FLSA and California labor law. While Plaintiffs are unable to state the exact  
4 number of either class without access to records within Defendants' possession, Plaintiffs  
5 believes and Defendants had presented that the California Class and the Federal Class exceed  
6 100 members.

7 Plaintiffs allege that common questions of law and fact predominate in this case. For  
8 example, the class members' rights insofar as this action is concerned arise from the Defendants'  
9 uniform payroll practice of paying straight time only, applicable to all non-exempt installation  
10 technicians. In light of the commonality of the sources of the putative class members' rights,  
11 individual adjudications harbor the possibility of inconsistent adjudications. Plaintiffs have no  
12 conflicts of interest and will fairly and adequately represent both classes. Plaintiffs are not aware  
13 of any other pending litigation concerning the claims asserted herein nor of any difficulties that  
14 should be encountered in the management of this litigation as a class action.

15 (4) Plaintiffs plan to file motions for the Court to consider class certification no later  
16 than November 30, 2008, though Plaintiffs may file such motions sooner.

17 Defendants dispute all allegations concerning class status.

#### 18 **10. Related Cases**

19 There are no related cases or proceedings pending before another Judge of this Court or  
20 before another Court or administrative body.

#### 21 **11. Relief**

22 At this point, Plaintiffs do not have sufficient record to estimate the damages.

#### 23 **12. Settlement and ADR**

24 Pursuant to this Court's order, parties had an early settlement conference before Judge  
25 Trumbull on March 7, 2008. The settlement conference did not lead to a settlement.

1                   **13. Consent To Magistrate Judge For All Purposes**

2                   Plaintiffs are not willing to consent to have a Magistrate Judge to conduct all further  
3 proceedings in this matter.

4                   **14. Other References**

5                   The parties agree that this case is not suitable for reference to binding arbitration or any  
6 other reference.

7                   **15. Narrowing Of Issues**

8                   Plaintiffs do not expect the parties to be able to narrow the issues. However, the issues in  
9 this case may be narrowed by motions related to the class action process.

10                   **16. Expedited Schedule**

11                   The parties do not believe that this is the type of case that can be handled on an expedited  
12 basis with streamlined procedures.

13                   **17. Trial**

14                   Plaintiffs have requested a jury trial. The expected length of trial is 15 court days.

15                   **18. Disclosure of Non-Party Interested Entities or Persons**

16                   Plaintiffs have no one to disclose other than parties themselves.

17                   **19. Other Matters**

18                   None.

19                   Dated: April 30, 2008

20                   By: /s/ ADAM WANG  
21                   Adam Wang  
22                   Attorney for Plaintiffs  
23                   Vladimir Balarezo & Osmin Avila

24                   Dated: April 30, 2008

25                   By: /s/ Grant Carlson  
Grant Carlson  
Attorney for Defendants  
Nth Connect Telecom Inc.

and Steven Chen

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